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In re Application of:	:	
MCMURTRY, David, R.	:	DECISION ON REFUND
U.S. Application No.: 10/500,714	:	REQUEST
PCT No.: PCT/GB03/00251	:	
International Filing Date: 22 January 2003	:	
Priority Date: 22 January 2002	:	
Atty Docket No.: 120300	:	
For: RE-ORIENTABLE SAMPLE	:	
HOLDER	:	

This decision is issued in response to the "Request For Refund To Deposit Account" filed 31 October 2005. No petition fee is required.

**BACKGROUND**

On 22 January 2003, applicant filed international application PCT/GB03/00251 that claimed a priority date of 22 January 2002 and designated the United States. On 31 July 2003, a copy of the international application was communicated to the United States Patent And Trademark Office (USPTO) by the International Bureau (IB). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 22 July 2004.

On 06 July 2004, applicants filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee and an executed declaration.

On 29 November 2004, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Acceptance (Form PCT/DO/EO/903) indicating that the requirements of 35 U.S.C. 371(c) were satisfied as of 06 July 2004.

On 24 March 2005, the application was published by the USPTO.

On 31 October 2005, applicant filed a "Petition For Express Abandonment To Avoid Publication Under 37 CFR 1.138(c)" and the "Request For Refund To Deposit Account" considered herein.

On 30 November 2005, the USPTO issued a "Decision Dismissing Petition Under 37 CFR 1.138(c)" noting that applicant's request for express abandonment will not be recognized because the application had already published.

### DISCUSSION

In the present application, applicant properly paid the \$920 basic national fee applicable at the time for the present application, and \$86 in additional claims fees. Applicant now requests a refund of "a portion of the basic fee, reflecting the search and examination fees." The basis for this request is the intended withdrawal of the application, which applicant asserts will eliminate the necessity of a search or examination.

As noted above, applicant's request to withdraw the application has been dismissed by the USPTO, and the search and examination of the application has proceeded (a first Office action was mailed on 25 January 2006). Thus, the underlying rationale for the present refund request has been eliminated.

Moreover, even if the application had been effectively withdrawn, applicant's "change of purpose" in deciding to withdraw the application would not have justified a refund of the properly filed fees. While 37 CFR 1.26(a) permits the USPTO to refund "any fee paid by mistake or in excess of that required," the regulation expressly states that "[a] change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was paid ... will not entitle a party to a refund of such fee."

### CONCLUSION

The "Request For Refund To Deposit Account" is **DISMISSED** without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within **TWO (2) MONTHS** of the mail date of the present decision. Any request for reconsideration should include a cover letter entitled "Renewed Refund Request" and must include an adequate showing that a refund of a portion of the basic national fee herein is appropriate under the applicable statutes and regulations.

Please direct further correspondence with respect to this petition to Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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